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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION
18

19 AVAYA INC., a Delaware corporation,
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21 Plaintiff,

22 v.

23 RAYMOND BRADLEY PEARCE, et al.,
24

25 Defendants.
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Case No. 3:19-cv-00565 SI (KAW)

**STIPULATION AND [PROPOSED]
ORDER RE ENTRY OF PERMANENT
INJUNCTION AS TO DEFENDANT
ATLAS SYSTEMS, INC. AND
VOLUNTARY DISMISSAL**

1 Plaintiff AVAYA INC. (“Avaya”) and Defendant ATLAS SYSTEMS, INC. (“Atlas”), by
 2 and through their counsel of record, hereby **STIPULATE, AGREE**, and request that the Court
 3 **ORDER** the entry of the following permanent injunction and voluntary dismissals.

4 **STIPULATED FINDINGS**

5 WHEREAS, Avaya has a pending civil action in the United States District Court for the
 6 Northern District of California against Atlas and other parties, which principally alleges claims
 7 against Atlas and other Defendants for trademark infringement, copyright infringement, unfair
 8 competition, and other federal and state law claims, *see* Dkt. No. 249 (Case No. 3:19-cv-00565-SI
 9 (the “Civil Action”));

10 WHEREAS, Atlas has also filed an Amended Answer and Crossclaims in the Civil Action,
 11 *see* Dkt. No. 254;

12 WHEREAS, both Atlas has denied all claims and allegations made in the Civil Action;

13 WHEREAS, Avaya and Atlas have entered a confidential settlement agreement to resolve
 14 the Civil Action, which includes the entry of the following order re stipulated permanent
 15 injunction and dismissal as to Atlas (“Order”);

16 WHEREAS, Atlas stipulates to the Court’s jurisdiction over it, and stipulates to the facts
 17 necessary to establish jurisdiction over the Civil Action, for purposes of entering and/or enforcing
 18 this Order against it; and,

19 WHEREAS, the Parties stipulate to the voluntary dismissal of Avaya’s claims as to Atlas
 20 with prejudice only upon entry of this Order pursuant to Fed. R. Civ. Proc. 41(a).

21 **ORDER RE PERMANENT INJUNCTION AND DISMISSAL**

22 Accordingly, the Parties, by and through their counsel of record, hereby **STIPULATE** and
 23 **AGREE**, and request that the Court **ORDER** that Atlas including any officers, agents,
 24 representatives, employees, and all persons in active concert or participation with any of them who
 25 receive actual notice of this Order by personal service or otherwise, shall be forever and
 26 permanently restrained and enjoined from:
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1. selling any counterfeit, infringing, or stolen Avaya hardware or software products, excluding genuine Avaya products that are subject to the first sale doctrine¹; and/or,
2. knowingly inducing an Avaya partner to violate its authorized reseller agreement with Avaya, such as knowingly buying Avaya software products, including licenses or Avaya license codes/keys, including but not limited to license keys/codes contained on new or used SD cards from any Avaya partner for resale to end users.

IT IS FURTHER STIPULATED AND AGREED, and requested that the Court **ORDER**, that Avaya's claims as to Atlas are **HEREBY** dismissed with prejudice from the Civil Action pursuant to Fed. R. Civ. Proc. 41(a), and that the Court shall retain jurisdiction to entertain such further proceedings and to enter such further orders as may be necessary or appropriate to enforce the provisions of this Injunction or the Parties' settlement agreement.

IT IS SO STIPULATED.

DATED: August 10, 2023

SIDEMAN & BANCROFT LLP

By: /s/ Lyndsey C. Heaton
Lyndsey C. Heaton
Attorneys for Plaintiff
AVAYA INC.

DATED: August 10, 2023

LEWIS KOHN & WALKER, LLP

By: /s/ Brett Weaver
Brett Weaver
Attorney for Defendant
ATLAS SYSTEMS, INC.

¹ To ensure further clarity on this point, the Parties stipulate the resale of Avaya software licenses or Avaya license codes/keys, including but not limited to license keys/codes contained on new or used SD cards, would violate this Stipulated Permanent Injunction.

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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3 Dated: _____

SUSAN ILLSTON
United States District Judge

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Attestation

I hereby attest pursuant to Civil Local Rule 5-1(i)(3) that concurrence in the electronic filing of this document has been obtained from the other party signatory above.

DATED: August 14, 2023

LEWIS KOHN & WALKER, LLP

By: /s/ Brett Weaver

Brett Weaver

Attorneys for Defendant

ATLAS SYSTEMS, INC.